IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 24 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF WEALTH-TAX

Versus

DEVAR KAVASJI T.MODI EXECUTORS& TRUSTEE OF LATE DR.T.D.EDU.

Appearance:

1. WEALTH TAX REFERENCE No. 24 of 1992
MRS MONA M BHATT for Petitioner No. 1
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 15/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this Reference at the instance of the revenue, the following question is referred for our opinion in respect of assessment year 1981-82:-

"Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that public charitable trust had been validly created by the Will executed by the deceased and as such exemption under Section 5(1)(i) was allowable ?"

2. We have heard Mrs Mona Bhatt, learned Standing Counsel for the revenue. Though served, none appears for the respondent-assessee.

3. Late Dr. TD Edel Behram had by his last Will dated 16.5.1972 settled upon trust all his immovable and movable properties for the benefit of three institutions - Ashram for Lepers, Ashram for Tuberculosis patients and Ashram for physically disabled and for any other charitable purpose and had appointed two persons as executors of his Will. For the assessment year under consideration i.e. 1981-82, the executors and trustees of the estate of the testator claimed exemption under Section 5(1)(iv) of the Wealth Tax Act (hereinafter referred to as "the Act") in respect of the value of the movable and immovable properties settled upon trust. The Wealth Tax Officer as well as the Dy. Commissioner of Wealth-tax (Appeals) negatived the assessee's claim on the ground that since no trust deed was executed, the properties were not held under any trust for charitable purposes.

The Tribunal held that the trust was created under a Will itself and there was no necessity of executing a trust deed by the executors of the Will of the late testator. Accordingly, the Tribunal held that the trustees were entitled to claim exemption under Section 5(1)(i) because the exemption cannot be denied on the ground that the executors of the Will had not executed the formal deed of trust.

4. Mrs Bhatt, learned Standing Counsel for the revenue has submitted that the department had rightly held that in absence of execution of a formal deed of trust no trust came into being. The learned counsel relied on the decision of the Apex Court in K.R. Patel (Deceased, through legal representatives) vs. CIT, 239 ITR 738.

5. There could be no dispute about the legal proposition that creation of a valid trust is a matter governed by the Indian Trusts Act, 1882. Sections 5 and 6 there of are relevant and read as under:-

"5. Trust of immovable property - No trust in relation to immovable property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the Will of the author of the trust or of the trustee.

Trust of moveable property.

No trust in relation to movable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee.

These rules do not apply where they would operate so as to effectuate a fraud."

"6. Creation of trust - Subject to the provisions of section 5, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts (a) an intention on his part to create thereby a trust, (b) the purpose of the trust, (c) the beneficiary, and (d) the trust property, and (unless the trust is declared by Will or the author of the trust is himself to be the trustee) transfers the trust property to the trustee."

(emphasis supplied)

It is clear that execution of a Will by the author of the trust is one of the valid and permissible modes of creating a trust and once the author of the Will has indicated with reasonable certainty an intention on his part to create a trust, the purpose of the trust, the beneficiary and the trust property, the moment the testator expires, the trust would come into being. The bracketed words in Section 6 makes it clear that formal transfer of trust property to trustee is not required to be made where the trust is declared by Will or the author of the trust is himself to be the trustee.

6. In view of the aforesaid clear statutory provisions, we are of the view that once the conditions mentioned in Section 6 were found to have been satisfied, the trust in question came into being upon the death of the testator and no formal deed of trust was required to

be executed by the executors.

7. As regards the decision of the Apex Court in K.R. Patel (Deceased, through legal heirs) (supra), that was a case where the testator had under the Will bequeathed certain properties and stated that the executors of the Will were to dispose of the immovable and moveable properties and to spend the cash realised upon sale for charitable purposes, and the Apex Court held that the trust came into being when the executors converted the properties into cash and it was from the money so collected that the executors were to donate for charitable purposes.

8. No such similar provision of the trust deed is brought to our notice which could attract the aforesaid reasoning of the Apex Court. In the facts of the instant case, the author of the trust settled upon trust all his immovable and moveable properties for the benefit of the aforesaid three institutions and, therefore, the trust came into being upon the death of the testator. The Tribunal, therefore, rightly held that the trustees were entitled to get exemption under Section 5(1)(i) of the Act.

9. In view of the above discussion, we answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

10. The Reference accordingly stands disposed of.

(M.S. SHAH, J.)

(A.M. KAPADIA, J.)
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